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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
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BEFORE THE
PHYSICIAN ASSISTANT BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 950-2013-000068

TIEN-HOANG LU MAI, P.A.,

11514 Cheshire Street
Norwalk, CA 90650

ACCUSATION

Physician Assistant License No. 18238,

Respondent.

Complainant alleges:

PARTIES

1. Maureen L. Forsyth (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer Affairs (Board).

2. On or about December 13, 2005, the Board issued Physician Assistant License Number PA 18238 to Tien-Hoang Lu Mai, P.A. (Respondent). The Physician Assistant License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2017, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws.

4. Business and Professions Code section 3527¹ provides that the Board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license for unprofessional conduct.

5. California Code of Regulations, title 16, section 1399.521 states:

“In addition to the grounds set forth in section 3527, subdivision (a), of the Code, the board may deny, issue subject to terms and conditions, suspend, revoke or place on probation a physician assistant for the following causes: (a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon. (b) Using fraud or deception in passing an examination administered or approved by the board. (c) Practicing as a physician assistant under a physician who has been prohibited by the Medical Board of California or the Osteopathic Medical Board of California from supervising physician assistants. (d) Performing medical tasks which exceed the scope of practice of a physician assistant as prescribed in these regulations.”

6. California Code of Regulations, title 16, section 1399.545, states:

“(a) A supervising physician shall be available in person or by electronic communication at all times when the physician assistant is caring for patients.

“(b) A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.

“(c) A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.

¹ All statutory references are to the Business and Professions Code unless otherwise indicated.

1 “(d) The physician assistant and the supervising physician shall establish in writing
2 transport and back-up procedures for the immediate care of patients who are in need of emergency
3 care beyond the physician assistant's scope of practice for such times when a supervising
4 physician is not on the premises.

5 “(e) A physician assistant and his or her supervising physician shall establish in writing
6 guidelines for the adequate supervision of the physician assistant which shall include one or more
7 of the following mechanisms:

8 “(1) Examination of the patient by a supervising physician the same day as care is given
9 by the physician assistant;

10 “(2) Countersignature and dating of all medical records written by the physician assistant
11 within thirty (30) days that the care was given by the physician assistant;

12 “(3) The supervising physician may adopt protocols to govern the performance of a
13 physician assistant for some or all tasks. The minimum content for a protocol governing
14 diagnosis and management as referred to in this section shall include the presence or absence of
15 symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate
16 tests or studies to order, drugs to recommend to the patient, and education to be given the patient.
17 For protocols governing procedures, the protocol shall state the information to be given the
18 patient, the nature of the consent to be obtained from the patient, the preparation and technique of
19 the procedure, and the follow-up care. Protocols shall be developed by the physician, adopted
20 from, or referenced to, texts or other sources. Protocols shall be signed and dated by the
21 supervising physician and the physician assistant. The supervising physician shall review,
22 countersign, and date a minimum of 5% sample of medical records of patients treated by the
23 physician assistant functioning under these protocols within thirty (30) days. The physician shall
24 select for review those cases which by diagnosis, problem, treatment or procedure represent, in his
25 or her judgment, the most significant risk to the patient;

26 “(4) Other mechanisms approved in advance by the board.

27 “(f) The supervising physician has continuing responsibility to follow the progress of the
28 patient and to make sure that the physician assistant does not function autonomously. The

1 supervising physician shall be responsible for all medical services provided by a physician
2 assistant under his or her supervision.”

3 7. Section 3502 of the Code states in pertinent part:

4 “(a) Notwithstanding any other provision of law, a physician assistant may perform those
5 medical services as set forth by the regulations of the board when the services are rendered under
6 the supervision of a licensed physician and surgeon or of physicians and surgeons approved by the
7 board, except as provided in Section 3502.5.

8 “...”

9 8. Section 3502.1 of the Code states:

10 “(a) In addition to the services authorized in the regulations adopted by the Medical Board
11 of California, and except as prohibited by Section 3502, while under the supervision of a licensed
12 physician and surgeon or physicians and surgeons authorized by law to supervise a physician
13 assistant, a physician assistant may administer or provide medication to a patient, or transmit
14 orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully
15 furnish the medication or medical device pursuant to subdivisions (c) and (d).

16 “(1) A supervising physician and surgeon who delegates authority to issue a drug order to a
17 physician assistant may limit this authority by specifying the manner in which the physician
18 assistant may issue delegated prescriptions.

19 “(2) Each supervising physician and surgeon who delegates the authority to issue a drug
20 order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific,
21 formulary and protocols that specify all criteria for the use of a particular drug or device, and any
22 contraindications for the selection. Protocols for Schedule II controlled substances shall address
23 the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is
24 being administered, provided or issued. The drugs listed in the protocols shall constitute the
25 formulary and shall include only drugs that are appropriate for use in the type of practice engaged
26 in by the supervising physician and surgeon. When issuing a drug order, the physician assistant
27 is acting on behalf of and as an agent for a supervising physician and surgeon.

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1 “(b) “Drug order” for purposes of this section, means an order for medication which is
2 dispensed to or for a patient, issued and signed by a physician assistant acting as an individual
3 practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal
4 Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this
5 section shall be treated in the same manner as a prescription or order of the supervising physician,
6 (2) all references to ‘prescription’ in this code and the Health and Safety Code shall include drug
7 orders issued by physician assistants pursuant to authority granted by their supervising physicians,
8 and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature
9 of a prescriber for purposes of this code and the Health and Safety Code.

10 “(c) A drug order for any patient cared for by the physician assistant that is issued by the
11 physician assistant shall either be based on the protocols described in subdivision (a) or shall be
12 approved by the supervising physician before it is filled or carried out.

13 “(1) A physician assistant shall not administer or provide a drug or issue a drug order for a
14 drug other than for a drug listed in the formulary without advance approval from a supervising
15 physician and surgeon for the particular patient. At the direction and under the supervision of a
16 physician and surgeon, a physician assistant may hand to a patient of the supervising physician
17 and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon,
18 manufacturer as defined in the Pharmacy Law, or a pharmacist.

19 “(2) A physician assistant may not administer, provide or issue a drug order for Schedule II
20 through Schedule V controlled substances without advance approval by a supervising physician
21 and surgeon for the particular patient unless the physician assistant has completed an education
22 course that covers controlled substances and that meets standards, including pharmacological
23 content, approved by the board. The education course shall be provided either by an accredited
24 continuing education provider or by an approved physician assistant training program. If the
25 physician assistant will administer, provide, or issue a drug order for Schedule II controlled
26 substances, the course shall contain a minimum of three hours exclusively on Schedule II
27 controlled substances. Completion of the requirements set forth in this paragraph shall be verified
28 and documented in the manner established by the board prior to the physician assistant’s use of a

1 registration number issued by the United States Drug Enforcement Administration to the
2 physician assistant to administer, provide, or issue a drug order to a patient for a controlled
3 substance without advance approval by a supervising physician and surgeon for that particular
4 patient.

5 “(3) Any drug order issued by a physician assistant shall be subject to a reasonable
6 quantitative limitation consistent with customary medical practice in the supervising physician
7 and surgeon's practice.

8 “(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a
9 patient's medical record in a health facility or medical practice, shall contain the printed name,
10 address, and phone number of the supervising physician and surgeon, the printed or stamped
11 name and license number of the physician assistant, and the signature of the physician assistant.
12 Further, a written drug order for a controlled substance, except a written drug order in a patient's
13 medical record in a health facility or a medical practice, shall include the federal controlled
14 substances registration number of the physician assistant and shall otherwise comply with the
15 provisions of Section 11162.1 of the Health and Safety Code. Except as otherwise required for
16 written drug orders for controlled substances under Section 11162.1 of the Health and Safety
17 Code, the requirements of this subdivision may be met through stamping or otherwise imprinting
18 on the supervising physician and surgeon's prescription blank to show the name, license number,
19 and if applicable, the federal controlled substances registration number of the physician assistant,
20 and shall be signed by the physician assistant. When using a drug order, the physician assistant is
21 acting on behalf of and as the agent of a supervising physician and surgeon.

22 “(e) The medical record of any patient cared for by a physician assistant for whom the
23 physician assistant's Schedule II drug order has been issued or carried out shall be reviewed and
24 countersigned and dated by a supervising physician and surgeon within seven days.

25 “(f) All physician assistants who are authorized by their supervising physicians to issue drug
26 orders for controlled substances shall register with the United States Drug Enforcement
27 Administration (DEA).

28 “. . .”

1 9. Section 125 of the Code states:

2 “Any person, licensed under the provisions of Division 1 (commencing with Section 100),
3 Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is
4 guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him
5 or her, who conspires with a person not so licensed to violate any provision of this code, or who,
6 with intent to aid or assist that person in violating those provisions does either of the following:

7 “(a) Allows his or her license to be used by that person.

8 “(b) Acts as his or her agent or partner.”

9 10. Section 2052 of the Code states:

10 (a) “Notwithstanding Section 146, any person who practices or attempts to practice, or
11 who advertises or holds himself or herself out as practicing, any system of mode of treating the
12 sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
13 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
14 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
15 certificate as provided in this chapter or without being authorized to perform the act pursuant to a
16 certificate obtained in accordance with some other provision of law is guilty of a public offense. .
17 . .

18 “(b) Any person who conspires with or aids and abets another to commit any act described
19 in subdivision (a) is guilty of a public offense, subject to the punishment described in that
20 subdivision.

21 “(c) The remedy provided in this section shall not preclude any other remedy provided by
22 law.”

23 11. Section 2239 of the Code states, in pertinent part:

24 “(a) The use or prescribing for or administering to himself or herself, of any controlled
25 substance . . . constitutes unprofessional conduct.”

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1 12. Section 2238 of the Code states:

2 “A violation of any federal statute or federal regulation or any of the statutes or
3 regulations of this state regulating dangerous drugs or controlled substances constitutes
4 unprofessional conduct.”

5 13. Section 2234 of the Code, states, in pertinent part:

6 “The board shall take action against any licensee who is charged with unprofessional
7 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
8 limited to, the following:

9 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
10 violation of, or conspiring to violate any provision of this chapter.

11 “....

12 “(e) The commission of any act involving dishonesty or corruption which is substantially
13 related to the qualifications, functions, or duties of a physician and surgeon.

14 “(f) Any action or conduct which would have warranted the denial of a certificate.

15 “....”

16 14. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain
17 adequate and accurate records relating to the provision of services to their patients constitutes
18 unprofessional conduct.”

19 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
23 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
24 included in a stipulated settlement.

25 RELEVANT LAWS REGULATING CONTROLLED SUBSTANCES

26 16. Health and Safety Code section 11153, subdivision (a), provides:

27 “A prescription for a controlled substance shall only be issued for a legitimate medical
28 purpose by an individual practitioner acting in the usual course of his or her professional practice.

1 The responsibility for the proper prescribing and dispensing of controlled substances is upon the
2 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the
3 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)
4 an order purporting to be a prescription which is issued not in the usual course of professional
5 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of
6 controlled substances, which is issued not in the course of professional treatment or as part of an
7 authorized narcotic treatment program, for the purpose of providing the user with controlled
8 substances, sufficient to keep him or her comfortable by maintaining customary use.”

9 17. Health and Safety Code section 11173, subdivision (a), provides:

10 “(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt
11 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
12 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

13 “(b) No person shall make a false statement in any prescription, order, report, or record,
14 required by this division.

15 “(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the
16 title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist,
17 veterinarian, registered nurse, physician's assistant, or other authorized person.

18 “(d) No person shall affix any false or forged label to a package or receptacle containing
19 controlled substances.”

20 18. Health and Safety Code section 11352.1, subdivision (b), provides, in pertinent part:

21 “[A]ny person who knowingly and unlawfully dispenses or furnishes a dangerous drug or
22 dangerous device, or any material represented as, or presented in lieu of, any dangerous drug or
23 dangerous device, as defined in Section 4022 of the Business and Professions Code, or who
24 knowingly owns, manages, or operates a business that dispenses or furnishes a dangerous drug or
25 dangerous device or any material represented as, or presented in lieu of, any dangerous drug or
26 dangerous device, as defined in Section 4022 of the Business and Professions Code without a
27 license to dispense or furnish these products, shall be guilty of a misdemeanor.”

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1 FIRST CAUSE FOR DISCIPLINE

2 (Providing Medical Services Without Authorization)

3 19. Respondent is subject to disciplinary action under section 3502, subdivision (a), of the
4 Code and California Code of Regulations, title 16, sections 1399.521, subdivision (d), and
5 1399.545, in that she provided medical services without authorization. The circumstances are as
6 follows:

7 20. Between approximately February 2013 and June 2014, Respondent performed
8 medical services at Bolsa Medical Clinic in Westminster, California, without the supervision of a
9 licensed physician and surgeon or of physicians and surgeons approved by the Board.

10 SECOND CAUSE FOR DISCIPLINE

11 (Administration of Controlled Substances Without Advance Approval

12 by a Supervising Physician)

13 21. Respondent is subject to disciplinary action under section 3502.1 of the Code in that,
14 without appropriate protocols in place as required, she prescribed controlled substances without
15 advance approval by a supervising physician. The circumstances are as follows:

16 22. Between approximately February 2013 and June 2014, Respondent performed
17 medical services at Bolsa Medical Clinic in Westminster, California, without the supervision of a
18 licensed physician and surgeon or of physicians and surgeons approved by the Board.

19 23. Between February 2013 and June 2014, Respondent prescribed and/or dispensed
20 controlled substances without supervision including, but not limited to, the following:

- 21 • Lorazepam (Ativan), a controlled substance used for the treatment of anxiety
- 22 disorders;
- 23 • Phentermine, a Schedule IV controlled substance used as a stimulant; and
- 24 • Hydrocodone, a controlled substance used to treat severe pain.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Aiding and Abetting Unlicensed Practice)

3 24. Respondent is subject to disciplinary action under sections 125 and 2052, subdivision
4 (b), of the Code in that Respondent aided and abetted an unlicensed individual in the practice of
5 medicine. The circumstances are as follows:

6 25. Between approximately May 2013, and June 2014, Respondent employed N.N. at the
7 Bolsa Medical Clinic Practice.

8 26. N.N. was not a licensed healthcare provider.

9 27. N.N. performed duties which included taking vital signs, giving injections, and
10 prescribing and/or dispensing medications, including controlled substances.

11 FOURTH CAUSE FOR DISCIPLINE

12 (Self-Prescribing Controlled Substances)

13 28. Respondent is subject to disciplinary action under section 2239 of the Code in that she
14 prescribed controlled substances for herself. The circumstances are as follows:

15 29. Respondent signed prescriptions for controlled substances for herself using
16 prescriptions of health care providers without the knowledge and/or permission of the health care
17 providers and in violation of Health and Safety Code section 11173, subdivision (a), as follows:

- 18 • Respondent signed prescriptions for dextroamphetamine (Aderrall), a controlled
19 substance and central nervous system stimulant used to treat attention deficit
20 hyperactive disorder and narcolepsy, dated July 31, 2014, and October 2, 2013, on a
21 form listing H.S., M.D., as the prescriber;
- 22 • Respondent signed a prescription for dextroamphetamine, dated December 8,
23 2013, on a form listing M.B., M.D. as the prescriber;
- 24 • Respondent signed prescriptions for dextroamphetamine, dated January 2, 2014,
25 January 29, 2014, and March 3, 2014, on a form indicating T.T., P.A.-C, as the
26 prescriber;
- 27 • Respondent signed a prescription for dextroamphetamine, dated June 26, 2014,
28 on forms listing S.C., M.D., as the prescriber.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Violation of Drug Laws)

3 30. Respondent is subject to disciplinary action under section 2238 of the Code in that she
4 violated drug laws. The circumstances are as follows:

5 31. Complainant incorporates the allegations in the Fourth Cause for Discipline as if fully
6 set forth.

7 32. Between approximately May 2013 and June 2014, Respondent violated Health and
8 Safety Code section 11153, subdivision (a), and/or Health and Safety Code section 11173,
9 subdivision (a), when she prescribed controlled substances without a medical purpose and not in
10 the usual course of business and/or on prescription forms listing prescribers other than herself
11 without the knowledge and/or permission of the prescribers:

12 • Respondent signed prescriptions for controlled substances for patients on
13 prescriptions listing H.S., M.D., as the prescriber;

14 • Respondent signed prescriptions for controlled substances for patients on
15 prescriptions listing S.C., M.D., as the prescriber.

16 33. Between approximately May 2013 and July 2014, Respondent violated Health and
17 Safety Code section 11173, subdivision (a), when she ordered/procured controlled substances,
18 including hydrocodone, from Bryant Ranch PrePack using the Drug Enforcement Agency (DEA)
19 licenses of H.S., M.D. and/or S.C., M.D. without the knowledge and/or permission the physicians.

20 34. Between approximately May 2013 and July 2014, Respondent violated Health and
21 Safety Code section 11352.1, subdivision (b), when she operated a business that dispensed
22 dangerous drugs without a license to do so.

23 • Complainant incorporates the allegations in paragraph 31 above.

24 • Respondent ordered large amounts of controlled substances from Bryant Ranch
25 PrePack in her own name and DEA license.

26 • Respondent maintained controlled substances at Bolsa Medical Center for
27 dispensing to the public, including Zolpidem, Alprazolam, Lorazepam, Clonazepam and
28 Diazepam (benzodiazepines), as well as Phentermine.

- Respondent provided repackaged medications directly from the Bolsa Medical Clinic.
- Respondent permitted N.N., an unlicensed employee, to dispense medications, including controlled substances, from the Bolsa Medical Clinic.
- Respondent failed to maintain required logs for dispensed controlled substances.

SIXTH CAUSE FOR DISCIPLINE

(Dishonest and Corrupt Acts)

35. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that she engaged in dishonesty and corruption in the practice of medicine. The circumstances are as follows:

36. The allegations of the First through Fifth Causes for Discipline are incorporated in their entirety by reference as if fully set forth.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

37. Respondent is subject to disciplinary action under Section 2266 of the Code in that she failed to maintain adequate and accurate records in relation to her practice at Bolsa Medical Clinic.

38. The allegations of the First through Fifth Causes for Discipline are incorporated in their entirety by reference as if fully set forth.

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Board issue a decision:

1. Revoking or suspending Physician Assistant License Number PA 18238, issued to Tien-Hoang Lu Mai, P.A.;
2. Ordering Tien-Hoang Lu, Mai, P.A. to pay the Physician Assistant Board the reasonable costs of the investigation and enforcement of this case pursuant to section 125.3 of the Code;

1 3. Ordering Tien-Hoang Lu, Mai, P.A., to pay the Physician Assistant Board the costs
2 of probation monitoring (if placed on probation), and the costs of investigation and enforcement
3 pursuant to section 3527, subdivision (f), of the Code; and

4 4. Taking such other and further action as deemed necessary and proper.
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8 DATED: December 15, 2016


MAUREEN L. FORSYTH
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
Complainant

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